

REMARKS

Applicant is in receipt of a non-final Office Action mailed 15 June 2005. In this Office Action, the Examiner has rejected claims 1 - 47 as being anticipated under 35 USC 102(e) by "David L. Trafton - Lockheed Martin, 'How to Use Your PLUS Results: For Examiners', November 23, 1999, pages 1 - 6"; however, the Examiner has cited the statute for 35 USC 102(a). Trafton is not an "application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent" as described in 35 USC 102(e). It is also clear that Trafton is not "a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent...." as described in 35 USC 102(e). For these reasons, Trafton does not qualify as prior art under 35 USC 102(e).

Applicant will treat the current Examiner's rejection as being under 35 USC 102(a). Applicant submits that the Examiner has not presented a *prima facie* case of unpatentability under 35 USC 102(a). Applicant disagrees that the Trafton document qualifies as a publication within the meaning of the patent statutes. Furthermore, if Trafton were a publication, Trafton does not teach each and every element of the claims.

Trafton Is Not a Publication

Applicant respectfully requests that the Examiner withdraw rejections based on Trafton because Applicant submits that Trafton is not a "printed publication" within the meaning of the patent statutes. Section 2128 of the MPEP states the following:

"2128 "Printed Publications" as Prior Art

A REFERENCE IS A "PRINTED PUBLICATION" IF IT IS ACCESSIBLE TO THE PUBLIC

A reference is proven to be a "printed publication" "upon a satisfactory showing that such document has been disseminated or otherwise made available to the extent that persons interested and ordinarily skilled in the subject matter or art, exercising reasonable diligence, can locate it." In re Wyer, 655 F.2d 221, 210 USPQ 790 (CCPA 1981) (quoting I.C.E. Corp. v. Armco Steel Corp., 250 F. Supp. 738, 743, 148 USPQ 537, 540 (SDNY 1966)) ("We agree that 'printed publication' should be approached as a unitary concept. The traditional dichotomy between 'printed' and 'publication' is no longer valid. Given the state of technology in document duplication, data storage, and data retrieval systems, the 'probability of dissemination' of an item very often has little to do with whether or not it is 'printed' in the sense of that word when it was introduced into the patent statutes in 1836. In any event, interpretation of the words 'printed' and 'publication' to mean 'probability of dissemination' and 'public accessibility' respectively, now seems to render their use in the phrase 'printed publication' somewhat redundant.") In re Wyer, 655 F.2d at 226, 210 USPQ at 794.

See also Carella v. Starlight Archery, 804 F.2d 135, 231 USPQ 644 (Fed. Cir. 1986) (Starlight Archery argued that Carella's patent claims to an archery sight were anticipated under 35 USC 102(a) by an advertisement in a Wisconsin Bow Hunter Association (WBHA) magazine and a WBHA mailer prepared prior to Carella's filing date. However, there was no evidence as to when the mailer was received by any of the addressees. Plus, the magazine had not been mailed until 10 days after Carella's filing date. The court held that since there was no proof that either the advertisement or mailer was accessible to any member of the public before the filing date there could be no rejection under 35 USC 102(a).).

The document supplied by the Examiner and identified as "David L. Trafton - Lockheed Martin, 'How to Use Your PLUS Results: For Examiners', November 23, 1999, pages 1 - 6" is not accessible to the public. The Examiner has not made "a satisfactory showing that such document has been disseminated or otherwise made available to the extent that persons interested and ordinarily skilled in the subject matter or art, exercising reasonable diligence, can locate it." There is no journal citation available. There is no library index or call number available. There are no conference proceedings available that cite Trafton. There are no databases, online or otherwise, where "David L. Trafton - Lockheed Martin, 'How to Use Your PLUS Results: For Examiners', November 23, 1999, pages 1 - 6" may be located, obtained, referred to, or cited. Trafton is not a "printed publication" or an electronic facsimile thereof within the meaning of the patent statutes as described by MPEP Section 2128. Whether or not Trafton was printed or

electronic, Trafton was not and is not accessible to the public. To the contrary, Trafton appears to be an internal document that was not published or otherwise disseminated to the public in any way. As a result, there is no possible way that persons interested and ordinarily skilled in the subject matter or art, exercising reasonable diligence, could locate the Trafton document.

Additionally, the date on the Trafton document is hearsay. The Trafton document might be dated November 23, 1999; however, this date cannot be authenticated. For instance, there is no library date stamp, mail date, received date stamp, copyright date, or other means external to the document to accurately date its dissemination, if any. It is possible that the Trafton document was published years after 1999, if at all. Without a verifiable publication date, the text "November 23, 1999" on the first page of Trafton is not reliable as a publication or dissemination date.

Trafton Does Not Teach the Claimed Invention

For purposes of argument only, if the Trafton document did qualify as prior art, Trafton would not anticipate claims 1 - 47 for the following reasons. These reasons are given herein only to further prosecution and provide a complete response, and should not be construed as an acquiescence that Trafton qualifies as prior art.

With regard to all pending claims, Trafton does not teach "a text request comprising a unique identifier and unformatted text" as required by claims 1 - 8; nor does Trafton teach "a request comprising a unique identifier and data" as required by claims 9 - 21 and 35 - 47; nor "a unique identifier and unformatted data" as required by claims 22 - 34. This is shown, for example, at

Trafton page 2 at 3 (d), which illustrates the specific formatting required for a search query.

Trafton describes the specific syntax required:

"Copy the first group of 50 numbers including parentheses and the '.wku' onto the clipboard by highlighting it with the mouse and pressing Ctrl-C." (emphasis added)

Specific formatting is further illustrated on Trafton page 5 at (b) which states:

"Select a block of patent numbers including the '(' at the beginning and the ').pn.' at the end of the block." (emphasis added)

To reiterate, specific syntax required to query EAST or WEST fails to anticipate the claim elements of "unformatted text" and "unformatted data." Because Trafton does not teach every element of these claims, Trafton cannot anticipate. Applicant respectfully requests the rejection under 35 USC 102(a) be withdrawn.

The advantage of the claimed invention is that the user need not format in a particular way the request made, much unlike Trafton. An embodiment of the claimed invention is described, for example, in Figures 4 and 6 of this specification. In this example, a user wants to obtain all the patent documents cited in an email message. To obtain the documents, all the user needs to do is copy and paste the entire email message into a browser area, and the user's data entry is done. The order is processed by computer software, which parses the email message and identifies the patent numbers (unique identifiers) from amongst "unformatted text," "unformatted data" or other "data" sent in the request. This software can execute on the server or client depending on

the specific implementation desired (see this specification at page 14, lines 22 - page 15, line 4).

Trafton's reliance on special query syntax cannot permit anticipation of the instant claims.

Trafton's examples could not handle the email example discussed above and disclosed in the instant specification. If a user were to paste the request shown in Figure 6 of this specification into "WEST" or "EAST", the query would fail because it was not formatted correctly. EAST and WEST require the parentheses and file extensions ".wku" or ".pn". The instant invention lacks this requirement. Another request that Trafton's EAST and WEST will fail to handle and the instant invention will handle is the input of the entire text of a patent into the browser request area. Trafton's EAST or WEST query could not take the form of an entire patent text because it would not handle the unstructured format of the request, let alone the size of the request. In contrast, the claimed invention permits a user to obtain every patent cited within an entire patent simply by pasting the text of the patent into the browser request area.

Applicant respectfully disagrees that the passages cited by the Examiner on pages 2, 3 and 5 of Trafton disclose "unformatted text" or "unformatted data" according to the claimed invention. Rather, Trafton describes specifically formatted syntax for query input. There is nothing "unformatted" about a required syntax.

Regarding dependent claims, all dependant claims are novel over Trafton for the reasons stated above and for the following additional reasons.

With regard to claims 4, 12, 25, and 38, Trafton does not teach delivery of items as a bundle. To the contrary, reading each desired patent requires clicking on each one individually, as shown on page 6, bottom figure. Because Trafton does not teach every element of these claims, Trafton cannot anticipate these claims. Applicant respectfully requests the rejection under 35 USC 102(a) be withdrawn.

With regard to claims 7, 8, 19, 19, 31, 32, 44 and 45, Trafton does not teach parsing performed on a client computer or a server computer. Trafton is silent as to whether parsing occurs on a server or client computer. Silence cannot be construed as anticipation. Because Trafton does not teach every element of these claims, Trafton cannot anticipate. Applicant respectfully requests the rejection under 35 USC 102(a) be withdrawn.

With regard to claims 15, 16, 28, 29, 41 and 42, Trafton does not teach delivery of a "consumer product" nor a "service" as required by these claims. Because Trafton does not teach every element of these claims, Trafton cannot anticipate these claims. Applicant respectfully requests the rejection under 35 USC 102(a) be withdrawn.

Regarding claims 21, 34 and 47, Trafton does not teach that the request comprises an image. There is no disclosure in Trafton of inputting an image. Applicant respectfully disagrees with the Examiner that Trafton teaches that "the request comprises an image." Trafton would fail if a query contained an image or anything other than the specific required format. Because Trafton does not teach every element of these claims, Trafton cannot anticipate these claims. Applicant respectfully requests the rejection under 35 USC 102(a) be withdrawn.

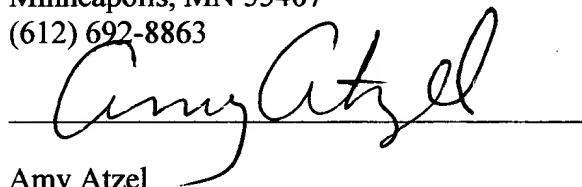
Regarding claim 44, Trafton does not teach Java applets. Because Trafton does not teach every element of this claim, Trafton cannot anticipate. Applicant respectfully requests the rejection under 35 USC 102(a) be withdrawn.

CONCLUSION

For the reasons set forth above, claims 1 - 47 are believed patentable. Applicant requests withdrawal of all rejections and issuance of claims 1 - 47.

Respectfully submitted,

Amy Atzel
3116 12th Ave S #207
Minneapolis, MN 55407
(612) 692-8863



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Amy Atzel
Applicant pro se